IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5504 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHEKHALYA KALYANBHAI NANUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioners

Mr. IM Pandya AGP for Respondent No. 1, 3

RULE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 28/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Mangukia is appearing for the petitioners. Learned AGP Mr. Pandya is appearing for the respondent authorities. In this petition, this

court has issued rule on 31.7.1990 and it was made returnable on 16.8.1990. In this petition, an affidavit in reply has been filed on behalf of respondent No.3 dated 7th June, 2000.

In this petition, the petitioners have challenged the order passed by the respondent No.1 dated 17th July,1990 in revision application NO.18 of 1989 wherein the order passed by respondent no.2 dated 16/19th June, 1989 has been confirmed. In para 28 b of the petition, the petitioners have also prayed for directing respondents nos. 1 and 2 to grant the plot of and ad measuring 100 sq. mtrs. to each of the petitioners from surveyNo. 254 of the town Botad, forthwith. Before the Additional Chief Secretary (Appeals), Revenue Department, Ahmedabad, the petitioners have challenged the orders passed by the Collector dated 21.3.1985 rejecting the request of the petitioner for allotment of the land in question in surveyNo. 454 of Botad village by filing revision application no. SRD/LND/R/221/85 before the Addl. Chief Secretary. The Addl. Chief Secretary set aside the order passed by the Collector dated 21.3.1985 and directed to consider the case of the petitioners after verifying situation of the village and also to verify as to whether the Government land could be allotted at proper place for residence by making plotting a fresh. It has also been directed under the said order dated 31.7.1987 by the Addl. Chief Secretary (Appeals) Revenue Department, Government not to consume period of more then ten days for such reconsideration. Thereafter, on the basis of the order passed by the revisional authority, an application has ben submitted to the Mamlatdar, Botad. The petitioners received communication from the Collector, Bhavnagar dated 28.12.1988 wherein the Collector Bhavnagar has called upon he petitioners to remain present on 3.1.1989 for considering his case for allotment of the Government land for residential purpose. The Additional Chief Secretary (Appeals) Revenue Department has also written letter dated 27.2.1989 to the Collector, Bhavnagar asking the Collector to submit report in pursuance to the order passed by him and in respectof the application of thepetitioner dated 16.12.1988. Thereafter,the petitioners were called upon by the Mamlatdar to produce necessary documents like rationing card etc and ultimately, on 16/19th June, 1989, the Collector, Bhavnagar rejected the application of the District Collector on the ground that the land in question which has been demanded by the petitioner is Gauchar land and there is shortage of the Gauchar land, and, therefore, request of the petitioner for the said land cannot be considered and cannot be accepted against

which order, revision application has been filed before the Additional Chief Secretary (Appeals) Revenue Department Ahmedabad but the said application has also been rejected by the Additional Chief Secretary (Appeals) by his order dated 17th April, 1990.

In this petition, respondent No.3, Mamlatdar, Botad has filed affidavit in reply wherein the deponent has made the following submissions in page 3 of the affidavit in reply (page 36 of the petition which reads as under:

"I further say and submit that the petitioners are requested to select any other government waste land of the village Botad. However, till date, the petitioners have not forwarded any application with respect to other Government waste land and had insisted for the aforesaid survey number.I further say and submit that the Collector is ready to consider the case of the petitioners for granting them the land in any other S.No. and more particularly when the petitioners have been offered to select the land from survey no. 1989 of the village Botad which is on the eastern side of the village Botad and that the said survey number at the Sarangpur Botad Road. I further say and submit that it is not correct that the respondents have denied the petitioners to grant the land according to the Government Resolution. However,as the petitioners had insisted for survey number 454 of village Botad and for the aforesaid reasons, it cannot be granted to the land less labourers for their dwelling and now the petitioners cannot be granted the said land. "

Therefore, in view of the averments made in the reply filed by the Mamlatdar, Botad, the grievances of the petitioners qua survey number 454 cannot be entertained in this petition. In view of the averments made by the deponent in the affidavit which are reproduced hereinabove, if the petitioners are prepared to select any other land except the land s.n.454 of village Botad, then, the respondents Mamlatdar as well as the Collector are ready and willing to consider the said demand of the petitioners in accordance with law for residential purpose. Therefore, in the interest of justice, following order is passed.

It will be open for the petitioners to approach the respondent Collector and Mamlatdar, Botad by making

fresh representation for granting Government waste land except survey No. 454 of village Botad for residential purpose in view of the Government Resolution. If such a fresh representation is made by the petitioners before the Mamlatdar, or Collector, Bhavnagar for allotment of Government waste land except land s.n.454 of village Botad, same shall be considered by the said authorities in light of the Government Resolution to grant government waste land for residential purpose in accordance with law within some reasonable period.

Subject to the above observations and directions, this petition, this petition is disposed of. Rule is discharged with no order as to costs with a liberty to the petitioners to move this Court by filing mere note in the Registry of this Court for revival of this petition in case of difficulty.

28.9.2000 (H.K. Rathod,J.)

Vyas